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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,259	09/17/2003	Thomas L. Byers	OKC00085	3398

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/664,259

Applicant(s)

BYERS, THOMAS L.

Examiner

Andrea M. Valenti

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MW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 10, 14 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-13, 15-13, and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**- DETAILED ACTION -**

***Election/Restrictions***

Upon further consideration the examiner withdraws the election restriction requirement for Groups I and II mailed 11 May 2004. However, the examiner maintains the species election requirement.

Applicant's election without traverse of species III in the reply filed on 11 June 2004 is acknowledged. Claims 10, 14, and 24 withdrawn from consideration.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5, 6, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,490,995 to Greene Jr.

Regarding Claims 1, 5, 6, 18, Greene teaches a modular animal enclosure, comprising: a housing comprising a base portion (#3) and a top portion (#2) removably attached to the base portion to form a sheltered interior, the housing including a door aperture (#9) to permit ingress of an animal into said interior and a climate conditioning aperture (Fig. 6 discharge of #22) to accommodate a flow of atmospheric air between the interior and an external

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environment, and means for facilitating said flow of atmospheric air through the climate conditioning aperture (#12).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,575,239 to Bradburn et al in view of U.S. Patent No. 1,198,524 to Cunliffe.

Regarding Claim 22, Bradburn teaches a modular animal enclosure comprising a base portion (Bradburn #100) and a top portion (Bradburn #200) attached to the base portion to form a housing with a sheltered interior and a door aperture (Bradburn #30) to permit ingress of an animal into said interior, wherein the top portion is configured to be hinged to the base portion to facilitate access to the interior by pivotal movement of the top portion with respect to the base portion in a first direction. Bradburn is silent on at least one hinge pin which projects through respective first hinge apertures in the base portion and in the top portion on a first side of the housing, and wherein the base portion and top portion further comprise respective second hinge apertures on a second side of the housing opposite the first side so that the hinge pin can be alternately inserted through the second hinge apertures to facilitate access to the interior by

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pivotal movement of the top portion with respect to the base portion in a second direction. However, Cunliffe teaches a modular animal enclosure where at least one hinge pin (Cunliffe #18) which projects through respective first hinge (Cunliffe #15) apertures in the base portion and in the top portion on a first side of the housing, and wherein the base portion and top portion further comprise respective second hinge apertures (Cunliffe #17) on a second side of the housing opposite the first side so that the hinge pin can be alternately inserted through the second hinge apertures to facilitate access to the interior by pivotal movement of the top portion with respect to the base portion in a second direction. It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely the selection of an old and notoriously well-known alternate equivalent hinge/joint selected as an engineering manufacturing design choice for enhanced ergonomic performance.

Regarding Claim 23, Bradburn as modified inherently teaches the top portion is sized to nest within the base portion when the top portion is inverted (Bradburn Fig. 1).

Claims 19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,490,995 to Greene Jr. in view of U.S. Patent No. 1,198,524 to Cunliffe.

Regarding Claims 19 and 25, Greene is silent on a means for allowing pivotal movement of the top portion with respect to the base portion in alternate,

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opposing first and second directions. However, Cunliffe teaches a hinge means... that facilitates pivotal movement of the top portion in alternate directions (Cunliffe #18, 15 and 17). It would have been obvious to one of ordinary skill in the art to modify the teachings of Greene at the time of the invention with the teachings of Cunliffe for ergonomic ease to access the interior from both directions based on space constraints and the location of the enclosure.

Claims 16, 17, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,490,995 to Greene Jr. in view of U.S. Patent No. 5,193,483 to Crider.

Regarding Claims 16, 17, 20 and 21, Greene is silent on means for sensing the presence of the animal within the interior, and wherein the facilitating means is operationally responsive to the sensing means and means for detecting an ambient condition, and wherein the facilitating means is operationally responsive to the detecting means. However, Crider teaches it is old and notoriously well-known in the art to provide a sensor to detect ambient conditions (Crider abstract line 4). Sensor devices are old and notoriously well-known in any automated system (e.g. lights are on sensors when people enter rooms for energy conservation in office buildings etc). It would have been obvious to one of ordinary skill in the art to modify the teachings of Greene at the time of the invention for the advantage of energy conservation.

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~~Claims 1, 2, 5, 6, 9, 11, 12, 13, and 15 are rejected under 35 U.S.C.~~

103(a) as being unpatentable over U.S. 5,575,239 to Bradburn et al in view of U.S. Patent No, 5,887,436 to Duddleston.

Regarding Claim 1, Bradburn teaches a modular animal enclosure, comprising: a housing comprising a base portion (Bradburn #100) and a top portion (Bradburn #200) attached to the base portion to form a sheltered interior, the housing including a door aperture (Bradburn #30) to permit ingress of an animal into said interior. Bradburn is silent on the climate conditioning aperture. However, Duddleston teaches a climate conditioning aperture to accommodate a flow of atmospheric air between the interior and an external environment; and a climate conditioning unit configured for removeable attachment to the housing adjacent the climate conditioning aperture, the climate conditioning unit contactingly supported by the housing at a position a selected distance away from the climate conditioning aperture so as to form a gap there between, the climate conditioning unit facilitating said flow of atmospheric air through the gap and through the climate conditioning aperture to the interior (Duddleston Fig. 4). It would have been obvious to one of ordinary skill in the art to modify the teachings of Bradburn with the teachings of Duddleston at the time of the invention to provide the animal comfortable and healthy environmental conditions.

Regarding Claim 2, Bradburn as modified teaches the climate conditioning unit comprises a cover assembly comprising a plate member (Duddleston Fig. 4 to portion of #48) having a cross-sectional area greater than the cross-sectional

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area of the climate conditioning aperture (Duddleston Fig. 4 area of #50 and 51), wherein the plate member is supported by the housing at least at one location adjacent to, and outside of, the climate conditioning aperture.

Regarding Claim 5, Bradburn as modified teaches the climate conditioning unit comprises a cooled air unit which supplies cooled air to the interior (Duddleston Abstract).

Regarding Claim 6, Bradburn as modified teaches the climate conditioning unit comprises a fan unit which directs increased velocity ambient air through the climate conditioning aperture (Duddleston #42).

Regarding Claim 9, Bradburn as modified teaches the climate conditioning unit extends through the climate conditioning aperture and into the housing interior (Duddleston Fig. 4 #42).

Regarding Claim 11, Bradburn as modified teaches the climate conditioning aperture is substantially rectangular in cross-sectional extent (Duddleston Fig. 2).

Regarding Claim 12, Bradburn as modified is silent on the rectangular cross-sectional extent has a minimum dimension of at least four inches. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since modification is merely a change in size depending on the size of the enclosure which is directly proportional to the size of the animal.



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Regarding Claim 13, Bradburn as modified inherently teaches the top portion is sized to nest within the base portion when the top portion is inverted (Bradburn Fig. 1).

Regarding Claim 15, Bradburn as modified is silent on the climate conditioning aperture is centered in the top portion over the sheltered interior of the housing. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely a shift in location of an existing part performing the same intended function [*In re Japikse*, 181 F.2d 1019, 1023, 86 USPQ 70, 73 (CCPA 1950)].

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,575,239 to Bradburn et al in view of U.S. Patent No, 5,887,436 to Duddleston as applied to claim 2 above, and further in view of U.S. Patent No. 3,068,341 to Ortiz et al.

Regarding Claim 3, Bradburn as modified is silent on at least one post projects from the plate member and into a corresponding post aperture in the housing at said at least one location. However, Ortiz teaches a climate conditioning apparatus mounted with a post (Ortiz Fig. 1 #10 and #19). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely an alternate equivalent attachment means selected as an engineering manufacturing design choice for ease of assembly.

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Regarding Claim 4, Bradburn as modified teaches an insertion depth of the post into the respective post aperture can be slidingly adjusted to alter a cross-sectional thickness of the gap between the cover assembly and the top cover (Ortiz #13 and #10).

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,575,239 to Bradburn et al in view of U.S. Patent No, 5,887,436 to Duddleston as applied to claim 1 above, and further in view of U.S. Patent No. 3,160,139 to Wales, Jr.

Regarding Claims 7 and 8, Bradburn as modified is silent on the climate conditioning unit comprises a heating unit which supplies heated air to the interior, a radiant heat source which directs radiant heat into the interior. However, Wales teaches a modular animal enclosure with a radiant heat source (Wales Fig. 1 #23). It would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention to provide comfortable and healthy environmental conditions in colder climates.

Claims 16 and 17 are are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,575,239 to Bradburn et al in view of U.S. Patent No, 5,887,436 to Duddleston as applied to claim 1 above, and further in view of U.S. Patent No. No. 5,193,483 to Crider.

Regarding Claims 16 and 17, Bradburn as modified is silent on means for sensing the presence of the animal within the interior, and wherein the facilitating

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means is operationally responsive to the sensing means and means for detecting an ambient condition, and wherein the facilitating means is operationally responsive to the detecting means. However, Crider teaches it is old and notoriously well-known in the art to provide a sensor to detect ambient conditions (Crider abstract line 4). Sensor devices are old and notoriously well-known in any automated system (e.g. lights are on sensors when people enter rooms for energy conservation in office buildings etc). It would have been obvious to one of ordinary skill in the art to modify the teachings of Greene at the time of the invention for the advantage of energy conservation.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 4,443,387; U.S. Patent No. 2,689,906; U.S. Patent No. 3,710,761; U.S. Patent No. 2,183,472; U.S. Patent No. 6,637,374; U.S. Patent No. 6,403,922; U.S. Patent No. 5,975,025; U.S. Patent No. 5,809,936; U.S. Patent No. 6,341,579; U.S. Patent No. 2,280,779; U.S. Patent No. 3,048,147; U.S. Patent No. 2,732,826; U.S. Patent No. 3,389,687; United Kingdom Patent GB 2144317.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea Valenti  
Patent Examiner  
Art Unit 3643

23 August 2004



Peter M. Poon  
Supervisory Patent Examiner  
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